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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,150	03/26/2004	Shelley A. DiGirolamo		8371

7590 10/12/2006
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EXAMINER

SANTOS, ROBERT G

ART UNIT PAPER NUMBER

3673

DATE MAILED: 10/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/810,150	Applicant(s) DIGIROLAMO, SHELLEY A.	
	Examiner Robert G. Santos	Art Unit 3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4-9 and 12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-9 and 12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 7 is objected to because of the following informalities: In line 1, "3" should be changed to --1--. Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 4-6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,459,894 to Buonocore in view of U.S. Pat. No. 4,164,797 to Golembeck. Buonocore '894 discloses the use of a pillow kit (10), comprising a cover assembly (12) for a stand-alone pillow which includes substantially identical top (18) and bottom (20) portions, the top and bottom portions including spaced longitudinal sides and end sides; a plurality of chamber sections (32, 34 and 36) located interiorly of the cover assembly, defining a plurality of separate volumes within the cover assembly for the pillow (as described in column 3, lines 16-17); loose filling (16) located within the plurality of chamber sections; a plurality of core members (14), constructed to be insertable into and removable from the chamber sections, for selectively changing the support characteristics of the pillow. However, Buonocore '894 does not specifically disclose a condition wherein the top and bottom portions are secured around the

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peripheries thereof except for one side and the use of means for selectively opening and closing the one side. Golembeck '797 provides the basic teaching of a support article (10) provided with a cover assembly (12) comprising top and bottom portions which are secured around their respective peripheries except for one side and means (14) for selectively opening and closing the one side. The skilled artisan would have found it obvious at the time the invention was made to provide the pillow kit of Buonocore '894 with top and bottom portions which are secured around their respective peripheries thereof except for one side and means for selectively opening and closing said one side in order to facilitate cleaning of the cover assembly and removal or replacement of the loose filling and the at least one core member as desired.

As concerns claim 4, Buonocore '894 further discloses the condition wherein the chamber sections extend for substantially the entire length of the pillow (see Figures 1 & 2). With regards to claims 5 and 6, Buonocore '894 is also considered to show conditions wherein the inserts have different support characteristics and wherein the different characteristics include differences in fill weight in column 3, lines 56-61. As concerns claim 8, Buonocore '894 further teaches a condition wherein the pillow filling is natural feathers and/or down (see column 3, lines 51-52).

4. Claim 7 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buonocore '894 in view of Golembeck '797 as applied to claim 1 above, and further in view of U.S. Pat. No. 5,007,123 to Salyards. Buonocore '894 further teaches the use of a cover assembly which includes top and bottom portions having a plurality of fabric barriers extending therebetween (see column 3, lines 31-33); however, Buonocore '894, as modified by Golembeck

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'797, does not specifically disclose the use of a cover assembly comprising top and bottom portions each including substantially identical inner and outer layers formed from polyester and cotton, respectively. Salyards '123 provides the basic teaching of a support device (11) provided with outer and inner coverings (17, 19) which may be constructed either from cotton or polyester (see column 4, lines 18-21). The skilled artisan would have found it obvious at the time the invention was made to provide the pillow kit of Buonocore '894, as modified by Golembeck '797, with a cover assembly comprising top and bottom portions each including substantially identical inner and outer layers formed from polyester and cotton, respectively, since such materials are commonly used in the art of constructing cover assemblies as taught by Salyards '123.

5. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Buonocore '894 in view of Golembeck '797 as applied to claim 1 above, and further in view of U.S. Pat. No. 6,594,838 to Hollander et al. Buonocore '894, as modified by Golembeck '797, does not specifically disclose a condition wherein the pillow filling is synthetic material. Hollander et al. '838 provide the basic teaching of pillow fill material (22) which may be in the form of either natural or synthetic material (see column 4, lines 38-47). The skilled artisan would have found it obvious at the time the invention was made to replace the natural fill material of the pillow kit of Buonocore '894, as modified by Golembeck '797, with synthetic material since such a modification would have been generally recognized as a substitution of art-recognized equivalents as taught by Hollander et al. '838.

Response to Amendment

In response to Applicant's arguments on page 4 of her amendment concerning the Buonocore '894 reference, the examiner respectfully asserts that the device of Buonocore '894 could reasonably be considered as being a pillow since it is inherently capable of supporting a user's head. Claims in a pending application should be given their broadest reasonable interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1974). Furthermore, in response to Applicant's arguments that there is no suggestion to combine the Buonocore '894 and Golembeck '797 references, the examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiya*, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. *In re McLaughlin*, 170 USPQ 209 (CCPA 1971). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 USPQ 545 (CCPA 1969). In this case, although the motivations to make the modifications which were stated in the Office action were not expressly articulated within the references, one of ordinary skill in the art would have still found it obvious to combine the references simply due to the advantageous effects achieved by combining the structural elements inherent to the devices disclosed in the references. Thus it is believed that the examiner has provided a *prima facie* case of obviousness absent the use of impermissible hindsight.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Delfs '421, DiGirolamo '562, Ryndak '862, Ryndak '691, Robillard et al. '432, Schuckman '267, Sumergrade '164, Sourbeck '303, Angert '974 and Everts '775.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert G. Santos whose telephone number is (571) 272-7048. The examiner can normally be reached on Tues-Fr and first Mondays, 10:30 a.m. to 8:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia L. Engle can be reached on (571) 272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Robert G. Santos
Primary Examiner
Art Unit 3673

R.S.
October 2, 2006